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**ENDOGENOUS FACTORS INFLUENCING COLLECTIVE BARGAINING PROCESS IN
INDUSTRIAL RELATIONS: A CASE OF TEA ESTATES IN NANDI COUNTY, KENYA**

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ABSTRACT

Although the aim of collective bargaining is to eventually reach a mutual agreement, there is usually a degree of conflict in Kenya between the involved parties with regard to the means by which agreements may be reached and the terms on which it is reached. As a result of this, very few collective bargaining agreements are attained as compared to the number of industrial disputes raised. It was on this basis that the study sought to find out the endogenous factors

inhibiting CBP in Nandi Tea Estates. The study was guided by Cole's collective bargaining theory and employed a descriptive survey research design. Data was collected using questionnaire and interview schedule from union officials. Data was analysed using descriptive statistical techniques and presented in frequency tables. The study revealed that trade unions do not undertake adequate training in industrial relations negotiation skills. Trade unions also prefer retrospective implementation of CBP agreements as opposed to the employers who prefer prospective implementation. Unions in most cases negotiate for awards instead of settlements. Trade unions don't engage in adequate preliminary preparations for CBP. Further, the study established that trade unions pursue single-issue as opposed to multiple based demands. Trade union officials also tend to accept the demands of employers because they depend on the members' contributions remitted by employers through the check-off system. It was revealed that union officials are bribed by employers to accept relatively lower offer than the one they demand for their members. Further, union officials call for strikes or call off strikes even without the permission of members who would otherwise root for more negotiations as they continue working or continue with the strike until their demands are met.

1.1 Introduction to the Study

The trade union movement in Kenya is at present weak in terms of membership and organization; a fact that is attributed to a number of factors, including the emergence of splinter unions and growing abandonment of the existing tradition, as well as the unabated retrenchment which has tended to formalize the labor market. According to Hagglund (1994), workers in Kenya and their unions have suffered

under repressive government regimes, starting with the late nineteenth century colonial period and extending past independence in 1962-63 to the present. Besides, union leaders have always had to deal with various forms of government domination given that flourishing union organizations have several times been eliminated by government edict. Ironically, while professing to be tolerant concerning workers, the state has

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repressed workers' right to strike and have greatly limited the independence of trade unions and their leaders. Accordingly, labor laws are, in general, holdovers from colonial times and to this end, Kenyan economy adapted a market-based, pro-West political system. As a result of this, workers' wages and living conditions are little better, and possibly worse, than they were at the end of the colonial period; a fact that has led to numerous collective bargaining aimed at improving the conditions of the workers.

Although the aim of collective bargaining is to eventually reach a mutual agreement, there is usually a degree of conflict in Kenya between the involved parties concerning both the means by which agreements may be reached and the terms on which it is reached. Based on this account, very few collective bargaining agreements are attained as compared to the number of industrial disputes raised. Collective bargaining process in Kenya in most cases leads to a win-lose situation instead of a win-win situation which could be appropriate and gratifying to both of the wrangling parties. The win-lose situation could be as a result of various factors hampering collective bargaining process which this study sought to examine.

1.2 Statement of the Problem

In Kenya, most industrial disputes are reported to the Ministry of Labour from which some are referred to the Industrial court. This imply that parties to trade disputes resolution at the work place, local branch of the union and even at the national office of the union fail or are unable to agree or solve disputes that arises between them. The effect of weak employee and industrial relations system and practice is manifested in the increase in the spate of industrial strikes and attendant man-days lost. The number of man-days lost due to industrial strikes that have increased tremendously by about sevenfold to 175,329 in 2011 from 14,806 man-days in 2008. Kenya's labour

productivity growth had also declined from 4 per cent in 2007 to 1.4 per cent in 2012.

Labour unions in most cases resort to strikes, picketing or go-slow to try and force an issue when they feel that all other avenues may not achieve the desired end. The strikes, picketing and go-slows are as a result of failure to settle disputes or actions seen flagrantly unfair by the employees on the part of the employer (s). This indicates that there could be factors hampering collective bargaining process right from the work place to the national level. It was on this basis that the study sought to find out the endogenous factors inhibiting collective bargaining process in industrial relations.

2.1 Literature Review

Every organization must have an objective either to produce goods or provide services. This could be for commercial purposes or charitable. In order to produce goods and services an organization must have the necessary factors of production. The most critical factor of production is the human resource. This resource must be treated with a lot of care if the organization is to achieve its intended goals (Dessler, 2008). Employee relations examine the various aspects on how people at work inter-relate. Employee relations, therefore, is the interaction between employees themselves and also with their employers. Such interaction can either be formal or informal. It encompasses all areas of management that may include labor relations, employee involvement and participation, employee communication and industrial relations (Armstrong, 2008). Industrial relations system in Kenya is anchored on the International Labour Organization's Convention No. 150 of 178 on Labour Administration. This is domesticated through the Industrial Relations Charter (1984) and the Labour Relations Act (2007). The system provides for consultation between representatives of employees, employers and government

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within a tripartite framework on issues affecting workers and employers. The consultation is expected to be undertaken through joint industrial councils. The system envisages that such consultations start at the shop floor levels, cascading to the national levels. Kenya also has a host of institutions of social dialogue. These includes: the National Labour Board, National Council for Occupational Safety and Health, Wage Councils and the Industrial Court. The role of these institutions is to promote social dialogue and industrial harmony (Odhong, Were and Omolo, 2014).

According to Pattanayak (2003), collective bargaining is the collective equivalent to individual bargaining, where the prime aim is to achieve economic advantage. The Oxford Dictionary of Human Resource Management (2001) defines collective bargaining as the process through which trade unions and employers negotiate collective agreements that set the rates of pay and terms and conditions of employment of workers. It is also a process of joint regulation and can be differentiated from unilateral regulation of employment by employers or unions and legal regulations through the state.

Moorthy (2005) carried out a study on Industrial Relations Scenario in Textile Industry in Tamil Nadu and concluded that economic reforms have affected industrial relations in textile industry as there is a declining tendency in industrial disputes. The prevailing atmosphere of labour unrest could be attributed to total violation of certain norms of discipline by a section of trade unions and also by some employers. According to Omolo (2006), wages in EPZ are paid according to occupational categories of workers or sections in which the workers are

engaged. He found that majority of EPZ factories in Kenya blatantly violate both Kenya and international laws and conventions that protect employees' rights to associate freely and join a trade union of their choosing without interference or harassment from their employer.

Akhaukwa et al., (2013) found that academic staff felt that union and management did not cooperate well neither did they have mutual regard of each other nor were they willing to confer. Besides, management did not facilitated union's operation and its attitude to the union was not favorable. Academic staff were also discontented with the spirit of willingness to give and take, the degree of members' participation and feedback. The study further revealed that collective bargaining process had a significant effect on industrial relations environment in public universities in Kenya. This implies that a flawed process that is perceived to be unfair is likely to result in poor industrial relations environment and vice versa. However, the current study sought to determine the endogenous factors that inhibit collective bargaining process among the workers in Nandi Tea Estates, Nandi County, Kenya.

3.1 Research Methodology

This study adopted a descriptive survey research design that was grounded in Cole's (2002) collective bargaining theory. The study targeted Union officials who are involved in the collective bargaining process in Nandi Tea Estates. Data was collected using questionnaire and interview schedule. Data was analysed using descriptive statistical techniques. Data was presented using frequency tables.

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4.1 Results

Data was analysed from the 138 respondents of which 40 were female and 98 were male. Their level of education is shown in Table 1.

Table 1: Level of Education of the Respondents

Educational Level	Frequency	Percent	Cumulative Percent
University	2	1.4	1.4
Post Secondary	21	15.2	16.7
Primary	52	37.7	54.3
secondary	63	45.7	100.0
Total	138	100.0	

Source: Author, 2018

As shown in Table 1, less than half (45.7%) of the respondents had attained secondary education, 37.7% had attained primary education, 15.2% had attained post secondary education and 1.4% of the respondents had attained university education. This implies that majority (83.4%) of the respondents had attained primary and secondary education.

Endogenous Factors Inhibiting CBP

The study sought to establish the endogenous factors inhibiting collective bargaining process. The responses are presented in Table 2.

Table 2: Endogenous Factors Inhibiting CBP

Statement		SA	A	UD	DA	SDA	Total
Unions undertake adequate training in negotiation skills	n	8	15	4	59	52	138
	%	5.8	10.9	2.8	42.8	37.7	100
Unions' preference of retrospective implementation of CBP agreements inhibits CBP	n	35	61	8	25	9	138
	%	25.4	44.2	5.8	18.1	6.5	100
Unions negotiate for awards instead of settlements	n	39	63	8	14	14	138
	%	28.3	45.7	5.8	10.1	10.1	100
Unions engage in adequate preliminary preparations before negotiations	n	14	19	8	74	23	138
	%	10.1	13.8	5.8	53.6	16.7	100
Unions pursue single-issue based demands	n	20	73	8	26	11	138
	%	14.5	52.9	5.8	18.8	8	100
Union officials tend to embrace employers' demands for exchange of union remittance fees by the employers	n	40	74	8	8	8	138
	%	29	53.6	5.8	5.8	5.8	100
Union officials are bribed to accept employers' demands	n	48	66	6	10	8	138
	%	34.8	47.8	4.3	7.3	5.8	100
Union officials call for or terminate on going strike before adequately consulting its members	n	100	30	1	3	4	138
	%	72.5	21.7	0.7	2.2	2.9	100
Unions employ top-down management approach	n	98	22	2	8	8	138
	%	71	15.9	1.4	5.8	5.8	100

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As shown in Table 2, majority (80.5%) of the respondents denied the fact that unions undertake adequate training in industrial relations negotiation skills, 16.7% agreed to the same while 2.8% of the respondents were undecided as to whether unions are empowered with adequate negotiation skills. The results indicate that members of unions, especially officials lack adequate negotiation skills in industrial relations. Further, majority (69.6%) of the respondents acceded to the fact that trade unions prefer retrospective implementation of CBP agreements, 24.6% denied the same while 5.8% of the respondents were undecided on the preference of the unions on matters implementation. The result shows that unions insist on having the awards earned backdated to an earlier date which puts them in dispute with FKE again because employers prefer prospective implementation given that it is affordable than the retrospective one. The findings also shows that the majority (74%) of the respondents agreed to the fact that unions in most cases negotiate for awards instead of settlements while 20.2% denied the same. The results show that disputes between unions and employers are mainly resolved in the industrial court where awards are provided.

Table 2 reveals that the majority (70.3%) of the respondents denied the fact that unions engage in adequate preliminary preparations for CBP while 23.9% agreed. This implies that the unions don't adequately prepare themselves for negotiations in the CBP. Majority (67.4%) of the respondents acceded to the fact that unions pursue single-issue based demands, 26.8% denied the same while 5.8% of the respondents were undecided as to whether the demands by the unions are single-based. The results show that unions don't look at the grievances of their members in totality but on single basis. This makes the unions have several disputes with the employers; hence stifling CBP. There were 82.6% of the

respondents who stated that union officials tend to embrace employers' demands so as to have employers remit members' contributions. The results reveal that union officials tend to accept the demands of employers because they depend on the members' contributions remitted by employers through the check-off system. Similarly, majority (82.6%) of the respondents stated that union officials are bribed to accept employers' demands. It should be noted that 94.2% of the respondents were of the view that union officials call for or terminate on-going strike before adequately consulting the members. This means that the union officials call for strikes even without the permission of members who would otherwise root for more negotiations as they continue working. Similarly, union officials call off an on-going strike before the members are convinced that their grievances have been or are to be solved amicably. Further, 86.9% of the respondents asserted that union officials employ a top-down management approach in running the trade unions, which implies that members of unions do not own decisions concerning trade unions and that they are consumers of decisions reached by the officials even if the decisions are unpopular with the members.

5.1 Conclusion

Based on the findings, it can be concluded that trade unions do not undertake adequate training in industrial relations negotiation skills. Lack of adequate knowledge in economic factors and negotiation skills that determine the outcome of CBP therefore, hinders trade unions from improving the employment welfare of their members. Trade unions also prefer retrospective implementation of CBP agreements as opposed to the employers who prefer prospective implementation. This is one of the main reasons as to why collective bargaining agreement is never reached at the workplace as well as at the local and

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national level of unions. Unions in most cases negotiate for awards instead of settlements. most disputes especially on wage increment, dismissal and compensation end up not being resolved even at the national level of both the employees' and employers' organizations and therefore in most cases end up being resolved by the Industrial Court where only awards are given.

It can also be concluded that trade unions don't engage in adequate preliminary preparations for CBP. According to Armstrong (2000), a party must therefore have strong convictions on the dispute issues at hand. Further, the study established that trade unions pursue single-issue as opposed to multiple based demands. Trade union officials also tend

to accept the demands of employers because they depend on the members' contributions remitted by employers through the check-off system. It was revealed that union officials are bribed by employers to accept relatively lower offer than the one they demand for their members. This is partly attributed to the fact that during negotiations, employers manipulate industry based unionists by promising them certain favours so as to divert their attention from the substantive issues at hand (Aluchio, 1998). Further, union officials call for strikes or call off strikes even without the permission of members who would otherwise root for more negotiations as they continue working or continue with the strike until their demands are met.

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